

216.306

a Foreign Government—Representation, in solicitations that include the clause DFARS 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.

[56 FR 36340, July 31, 1991, as amended at 62 FR 34122, June 24, 1997; 62 FR 40472, July 29, 1997; 77 FR 19129, Mar. 30, 2012]

Subpart 216.3—Cost-Reimbursement Contracts

216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.* (i) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act;

(B) Are estimated to exceed \$25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The prohibition in paragraph (c)(i) of this section does not apply to contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(A) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(B) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or are for environmental work classified as construction.

[62 FR 1058, Jan. 8, 1997; 62 FR 1817, Jan. 13, 1997; 62 FR 49305, Sept. 19, 1997; 71 FR 39007, July 11, 2006]

Subpart 216.4—Incentive Contracts

216.401 General.

(c) See PGI 216.401(c) for information on the Defense Acquisition University Award and Incentive Fees Community of Practice.

(e) Award-fee plans required in FAR 16.401(e) shall be incorporated into all award-fee type contracts. Follow the

48 CFR Ch. 2 (10-1-12 Edition)

procedures at PGI 216.401(e) when planning to award an award-fee contract.

[75 FR 78619, Dec. 16, 2010, as amended at 76 FR 8305, Feb. 14, 2011]

216.401-70 Data collection.

Section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) requires DoD to collect relevant data on award and incentive fees paid to contractors and have mechanisms in place to evaluate such data on a regular basis. In order to comply with this statutory requirement, follow the procedures at PGI 216.401-70.

[75 FR 78619, Dec. 16, 2010]

216.401-71 Objective criteria.

(1) Contracting officers shall use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price-incentive contracts.

(2) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government also to incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective incentives and subjective award-fee criteria (i.e., cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

(3) See PGI 216.401(e) for guidance on the use of award-fee contracts.

[76 FR 8305, Feb. 14, 2011]

216.402 Application of predetermined, formula-type incentives.

216.402-2 Technical performance incentives.

See PGI 216.402-2 for guidance on establishing performance incentives.

[71 FR 39007, July 11, 2006]

216.403 Fixed-price incentive contracts.

216.403-1 Fixed-price incentive (firm target) contracts.

(b) *Application.*

(1) The contracting officer shall give particular consideration to the use of